HIGH COURT OF UTTARANCHAL AT NAINITAL.

Second Appeal No. 522 of 2001
(Second Appeal No. 333 of 1994)

Kripa Shanker Singj, Son of Nageshwar Singh,
Resident of village Bakainiya (Subhash Nagar)
Tahsil Godarpur, District Nainital. (Plaintiff)

…Appellant.

Versus

1. Dwarika Nath Tripathi, Son of Shri Ram Nakshatra Tripathi, Suresh Son of Dwarika,
2. Jaleshwar Nath Tripathi, Son of Shri Vidyanath Tripathi,
3. Ram Nakshatra Tripathi, Son of Shri Ram Dwan Tripathi,
4. All residents of village Bakainiya (Subhash Nagar) Tahsil Gadarpur, District Nainital.(Defendants)

… Respondents.

Sri N.S.Negi, learned Standing Counsel for the appellant.
Sri Dharamveer Sharma, Sr.Adv., assisted by Sri B.S.Parihar, learned counsel for the respondents.

Date August 05, 2006.

Hon. B.S. Verma, J.

This Second Appeal is directed against the judgment and decree dated 24-11-1993, passed by Sri Bansraj Singh, the then II Additional District Judge, Nainital, in Civil Appeal No. 46 of 1989, Kripa Shanker Singh Vs. Dwarika Nath Tripathi & others, whereby the appeal of the plaintiff-appellant has been dismissed, which arose out of the Original Suit No. 22 of 1986.

The suit was filed by the plaintiff appellant against the defendant- respondents for permanent injunction regarding the plot No.95/14/1, measuring 1 ***Bigha*** of village Bakonia. The plaintiff-appellant claimed to be the non-transferable Bhumidhar of the said plot. He has further stated that in the north of the plot the plot in dispute, *Abadi* of defendant no.1 Sri Dwarika Nath exists. It has been contended that the defendants are trying to grab and take possession of a portion of his land forcibly and with that intention, the defendants have put sand and bricks thereon. During the

pendency of the suit, the plaintiff got amendment to the effect that the defendants have been using the land of the plaintiff as open cattle-shed and thereby have encroached the suit land and it was prayed tat the defendants be directed to remove the unauthorised ***Khurlis*** and pegs.

The defendants contested the suit and filed written statement, denied the allegations made in the plaint. It was pleaded that the land in dispute is situated in Plot No. 95/15 and 95/14 and not over plot no. 93/14/1 and the defendants have put ***Khurlis*** for their cattle long before the filing of suit. The defendants have mentioned the boundaries of the disputed land and that of plot no. 95/14/1.

On the pleadings of the parties, the learned trial court (learned Munsif) framed necessary issues, recorded the evidence of the parties, heard them and after perusing the evidence came to the conclusion that the defendants are in possession over the disputed land since long before and the plaintiff had no right and possession thereon. The learned Munsif also held that the plaintiff had wrongly shown the boundaries of the disputed land and the plaintiff had not brought on record the complete facts on record. It was also held that the *Khurlis* were situate over plot no. 95/15 and 95/14/1. It was also held that the suit was barred by the principle of estoppels and ultimately, it was held that the plaintiff failed to substantiate his contention by cogent and reliable evidence and accordingly dismissed the suit vide judgment and decree dated 4.5.1989. Aggrieved. The plaintiff went up in appeal before the District Judge and the appeal was heard and decided by the II Addition District Judge. A finding to this effect was recorded by the appellant court that the plaintiff did not make any effort to demarcate the disputed land nor got is surveyed. The appellate court upheld the finding of fact recorded by the trial Judge and it was clearly held that the plaintiff failed to discharge his burden. Thus, it was held by both the courts that the Khurlis were constructed long before the filing of the

present suit and ultimately, the appellate court dismissed the appeal vide judgment and decree dated 24.11.1993.

I have heard the learned counsel for the plaintiff Sri N.S.Negi as well as Sri Dharam Veer Sharma, Senior Advocate assisted by Sri B.S.Parihar, learned counsel for the respondents and perused the record.

It is pertinent to note that the finding recorded by the two courts below that the defendants have constructed the disputed ***khurlis*** long before the filing of the suit by the plaintiff is a finding of fact, which stood concluded by concurrent finding of the appellate court. It also stands concluded by the findings of the two courts that the disputed land is not identifiable on spot as the plaintiff failed to take proper recourse to get the same done. More over, no substantial question of law is involved in the present appeal.

In view of the discussion above, the appeal is hereby dismissed in-limine. Interim order dated 14-8-1996 is hereby vacated. No order as to costs.

(B.S.Verma, J.)

RCP